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Comments of the

RUBBER MANUFACTURERS ASSOCIATION

On

Advance Notice of Proposed Rulemaking:
Standards Enforcement and Defect Investigation
Defect and Noncompliance Reports; Record Retention

National Highway Traffic Safety Administration
U.S. Department of Transportation

NHTSA-01-8677-15

Docket No. NHTSA 2001-8677; Notice 1

March 23, 2001

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I. INTRODUCTION

The Rubber Manufacturers Association ("RMA") is the primary trade association representing the interests of the tire and rubber industry in the United States. RMA's membership includes all of the country's major tire manufacturers: Bridgestone/Firestone, Inc., Continental Tire N.A., Cooper Tire & Rubber Company, Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation.

On behalf of its tire manufacturer members, RMA responds to the National Highway Traffic Safety Administration's ("NHTSA" or "Agency") Advance Notice of Proposed Rulemaking ("ANPRM") on "Standards Enforcement and Defect Investigation; Defect and Noncompliance Reports; Record Retention," Docket No. 2001-8677; Notice 1; published in the *Federal Register* on January 22, 2001.[1]

Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation Act ("TREAD Act") because of concern that NHTSA needed, in addition to the voluntary compliance mechanisms already in place, an "early warning reporting system" that would allow NHTSA to have earlier access to information that may assist in the identification of potential safety-related issues. Part of the TREAD Act included an explicit mandate to

[1] RMA has also filed separate comments in this proceeding on behalf of its non-tire manufacturer members, known as the General Products Group.

promulgate such an early warning regulatory scheme. Congress intended that NHTSA capture information already possessed by manufacturers that would provide the best possible indication of potential safety-related issues without overwhelming NHTSA with irrelevant data.

The legislative history of the TREAD Act also demonstrates Congress's intent to seek only the information most significant to early warning. For example, both the House and Senate offered legislation addressing the safety of motor vehicles and motor vehicle equipment. The Senate version was exceedingly broad in its scope and sought to require manufacturers to report any information that might conceivably provide some early warning of safety-related issues. The House bill, on the other hand, was much more focused and sought to limit the scope of an early warning reporting system to specific types of information. By passing the House version of the bill as the final TREAD Act, Congress sent a clear message that it intended that NHTSA require reporting only of those types of information that would most likely provide an effective and efficient early warning of possible safety-related issues with motor vehicles and equipment – not all information conceivably available.

NHTSA's objective in this proceeding, therefore, should be to construct and implement an effective and focused early warning reporting system. NHTSA should take care to maintain its focus on the types of data that will most effectively provide such early warning rather than casting a wide net seeking vast amounts of data that may or may not be reliable or relevant.

With these principles in mind, RMA and the tire industry have developed an efficient and effective proposed early warning reporting system for the tire industry.[2] The comments below explain RMA's proposed early warning reporting system and address related issues. Among those issues addressed are (i) the type of information to be reported and the frequency of reporting; (ii) which manufacturers should be subject to the reporting requirements; and (iii) how the Agency should manage and utilize the data reported to it.

[2] These comments address early warning reporting for passenger and light truck tires, which were the primary focus of the TREAD Act. NHTSA may consider expanding the early warning reporting requirements to other tires in the future. It is important to note that additional issues must be addressed when considering reporting requirements for other tires (including commercial tires) and that the system proposed in these comments would not necessarily be appropriate.

II. EARLY WARNING REPORTING REQUIREMENTS

A. THE TIRE INDUSTRY'S PROPOSED EARLY WARNING REPORTING SYSTEM

While the TREAD Act was under consideration in Congress, RMA's tire manufacturer members began developing a system for reporting tire information in a uniform manner to assist NHTSA in implementing the early warning reporting requirements of the TREAD Act. This arduous and time-consuming effort involved the direct participation of every one of the association's tire manufacturer members and RMA senior staff. RMA's proposal thus reflects the tire industry's consensus on the most effective and efficient early warning reporting system for tires.

After reviewing the TREAD Act's language and legislative history, and applying the considerable expertise of its members, RMA believes that the TREAD Act's early warning goals for tires will be achieved if all tire "manufacturers," as defined in 49 U.S.C. § 30166(m) (*see* discussion below at Section II.B), report the following categories of information:

(i) data on claims submitted to the manufacturer involving fatalities and serious injuries;

(ii) information about lawsuits seeking damages involving fatalities, serious injuries, or property damage from alleged tire defects;

(iii) aggregate statistical data involving claims for property damage from alleged tire disablements paid by the tire manufacturer; and

(iv) aggregate data involving warranty adjustments.

Reporting would be prospective only, *i.e.*, it would report information on events occurring after the effective date of the final rule.

The tire industry's proposed early warning reporting system is based on electronically reporting all four of these categories of information. The industry has put significant time and effort into ensuring that, to the extent possible, such reporting will be standardized for the industry, which NHTSA recognizes as a benefit. *See* 66 *Fed. Reg.* at 6537. We discuss below each of the four categories of early warning information, propose definitions for critical terms

used in the TREAD Act relevant to this rulemaking, and address related issues raised in the ANPRM.

Claims Involving Fatalities and Serious Injuries. Tire manufacturers would report all claims for fatalities and serious injuries. For this purpose, a "claim" would be defined as a written demand actually received by the tire manufacturer. Although the ANPRM suggests that "claims" might include telephone calls and the like, the industry believes the inherent unreliability of such information would be counterproductive to an early warning reporting system. Verbal complaints, including telephone calls received on a tire manufacturer's toll-free line, usually do not provide the tire manufacturer with specific information about the tire, the tire's condition, or other information necessary to verify the legitimacy of the complaint. Moreover, any such complaint that eventually results in a written claim, lawsuit, or warranty adjustment would be reported under RMA's proposed early warning reporting system. Therefore, to require reporting of all informal complaints would generate information that is misleading, because it is either duplicative or not meaningful. In addition, because any claim may consist of mere allegations and unsubstantiated information, the early warning reporting regulations should expressly provide that a manufacturer's reporting of such information in this category does not constitute an admission of any defect, liability or fault, or a concession that the claim is in any way legitimate or anything more than a mere allegation.

RMA believes that NHTSA's proposal to use the Abbreviated Injury Scale ("AIS") to characterize an injury's severity would be cumbersome and unduly burdensome, and that such specific information would largely be unavailable except in unusual circumstances. Reference to the AIS's complex rating scheme also seems unnecessary. The TREAD Act incorporates, albeit in the criminal penalties section, the definition of "serious bodily injury" contained in 18 U.S.C. §1365(g)(3): "bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ or mental faculty." RMA believes that this definition is sufficient for purposes of the early warning reporting system and is supported through its use in other provisions of the TREAD Act.

Under RMA's proposed early warning reporting system, information concerning claims or lawsuits involving fatalities or serious injuries would be made monthly, *e.g.*, on the 15th day of each month for reports of fatalities, lawsuits, or claims received in the prior month. This reporting frequency is recommended to allow appropriate time for translation of foreign data and consolidation of information to provide user-friendly data to NHTSA. To the extent they have the information, tire manufacturers would report the same information for foreign incidents involving a tire that is "identical or substantially similar" to a tire offered for sale in the United States. For this purpose, "substantially similar" would be defined as "tires that have the same

size, speed rating, load index, and construction,[3] irrespective of plant of manufacture or tire line name." This definition of "substantially similar" is sufficiently broad to serve the TREAD Act's purpose to ensure that relevant data concerning foreign incidents is reported and is sufficiently well-defined to enable all tire manufacturers to understand their reporting obligations. Claims involving fatalities in foreign countries would be reported monthly after the U.S. manufacturer receives actual notice of the foreign claim. Information actually received by the U.S. manufacturer concerning serious injuries would be reported monthly, as described above. A sample reporting form, showing hypothetical information, is attached hereto as Attachment A.[4]

Lawsuits. The tire manufacturers would report information regarding lawsuits seeking damages for fatalities, serious injuries, or property damage from alleged tire defects. Information about foreign lawsuits involving a tire that is "identical or substantially similar" to a tire offered for sale in the United States would be reported after the U.S. tire manufacturer receives actual notice thereof. This information would be reported monthly, as described above, on the same form as the injury claims information.

Aggregate Statistical Data on Property Damage. The tire manufacturers would report aggregate statistical data on all paid property damage claims. A "property damage claim" would be defined as a claim where the consumer received from the manufacturer monetary compensation in excess of the value of the tire. Because some payments will be made in connection with a customer satisfaction warranty adjustment, NHTSA must recognize that this reported information may include a payment made to a consumer by a tire manufacturer, even though there has been no allegation of a defect in the tire.

This information would be reported quarterly within thirty days after the end of each calendar quarter, *i.e.*, the report for the period January 1 through March 31 would be submitted no later than April 30. A sample reporting form, showing hypothetical information, is included in Attachment B hereto.[5]

RMA would limit this reporting to U.S. data only. RMA does not believe that the reporting of information concerning foreign property damage claims would further the early warning reporting goals of the TREAD Act. Property damage claims are uniquely the product of

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[3] Tires that have "the same construction" are those that have the same number of plies and belts, ply and belt construction and materials, placement of components, and component materials.

[4] Note that this proposed form would also include information concerning lawsuits.

[5] Note that this proposed form would also include information concerning warranty adjustments.

the culture of the particular country and would not likely be comparable across country lines. The information would also be quite difficult to gather. Requiring tire manufacturers to provide such information would be unduly burdensome, without providing any reliable information or other benefit for an early warning reporting system.

Warranty Adjustment Data. Any discussion of warranty adjustment data must start with an understanding and appreciation of the origins of a warranty system. For the most part, tire warranties in the United States are marketing tools used to foster and maintain customer relationships and goodwill, in other words, to gain a competitive advantage in the marketplace. The mere fact that a consumer removes a tire and receives complete or partial credit – an "adjustment" – against the price of a replacement tire is not evidence that there was anything "wrong" with the tire. Because of the competitive environment in the U.S. tire industry, many dealers, as well as tire manufacturers, sometimes use warranty adjustments as a means to "keep the customer happy" (thereby fostering customer loyalty). For these reasons, an adjustment is not necessarily a statement about product performance or an indication of product deficiency.

Adjustments of passenger and light truck tires typically are handled at two levels. The consumer returns a tire with which he or she is dissatisfied to the tire dealer. The dealer typically makes the decision whether to give the consumer an adjustment for the returned tire. The dealer's decision may or may not be made with input from the tire manufacturer.

Once the dealer has made a decision on an adjustment, the dealer typically takes possession of the returned (or "adjusted") tire. Dealers rarely have the technical expertise necessary to perform a true technical analysis of a tire's condition, so the information about the tire at the dealer level is typically based solely on consumer perception and perhaps a cursory look by dealer personnel. At this level of the adjustment process, there is very little useful technical information about the tire.

In many cases, however, the dealer may return the tire to the manufacturer for inspection. Tire manufacturers subject these returned tires to a detailed inspection by skilled technicians who are trained to determine the tire's condition when it came out of service. The trained technicians record the results of their inspection according to a set of codes individually developed by each manufacturer. The data recorded during these technical inspections often form the basis of the warranty data included in RMA's proposed early warning reporting system.

Tire manufacturers and only tire manufacturers have the expertise necessary to identify and code the tire's condition when it came out of service. It is this information that is most pertinent to this element of an early warning reporting system. The various manufacturers' systems, however, particularly the detailed codes by which specific conditions are recorded, vary

significantly from one manufacturer to the next. Recognizing the efficiency of standardized reporting, as NHTSA notes in the ANPRM, the tire manufacturers have included in their proposed early warning reporting system, to the extent reasonably possible, a standardized warranty information reporting system. Although it would be impossible to render warranty data from one manufacturer to the next entirely comparable, the industry has attempted to provide NHTSA with a meaningful system for categorizing data.

RMA proposes that warranty adjustment data be reported in the following five categories:

- Crown Conditions
- Sidewall Conditions
- Bead Conditions
- Other Conditions
- Customer Satisfaction Conditions

A sample reporting form, showing hypothetical information, a description of each of the above categories and the conditions reportable therein, and a diagram depicting a cross-sectional view of a tire are attached as Attachment B.[6] One proposed category bears note: the category "Customer Satisfaction Conditions" collects a host of adjustments that are made for reasons unrelated to any technical condition of the tire. These are largely "goodwill" adjustments. Even though adjustments reported in this category are by their nature not pertinent to an early warning reporting system, the tire industry proposes to report this data until such time as NHTSA may determine that such reporting is unnecessary in an effective early warning system.

Each manufacturer has determined how its individual code system would fit into this industry-wide five-category system. This warranty adjustment information would be reported quarterly within thirty days after the end of each calendar quarter, as noted above.

RMA believes that this warranty adjustment data (plus the injury, lawsuit and property damage data) will capture the most valuable safety-related information pertaining to tires. Because, in most cases, replacement of product at the individual consumer level will be reflected in warranty adjustment data, this information includes those categories specifically enumerated by the TREAD Act, *i.e.*, "customer satisfaction campaigns, consumer advisories, recalls or other activity involving the repair or replacement of . . . motor vehicle equipment." 49 U.S.C. § 30166(m)(1)(A)(ii). To the extent NHTSA believes that certain enumerated information about

[6] Also, for convenience, we have attached a narrative description of tire components and tire manufacturing as Attachment C.

replacement of product for customer satisfaction must be reported in a specific format, RMA will be willing to work with the Agency to address this issue.

- **Reporting Thresholds.** NHTSA appears to recognize that the amount of warranty data called for by this section will be voluminous and possibly overwhelming to the Agency. Indeed, NHTSA has invited comment as to whether some sort of reporting thresholds would be appropriate. The tire manufacturers agree that the data reported for warranty adjustments will be voluminous, but there currently is no industry standard for determining what reporting thresholds might be appropriate. An analysis of adjustments is a process involving several factors, including tire sizes and types, market conditions, the time tires have been in service, the type of adjustment code, etc. Also, there are significant differences in the warranty adjustment policies among companies. Therefore, RMA is not proposing thresholds, but we recognize that, after NHTSA and the tire industry become more familiar with the reporting system, it may be appropriate to work together to develop reporting thresholds to facilitate the Agency's analysis of early warning data.

- **Minimum Production Numbers.** Because information about tires with small production runs could result in skewed or unreliable data, NHTSA should establish a minimum production number for reporting warranty adjustment data. RMA believes the current 15,000 tire standard adopted for Uniform Tire Quality Grading, 49 C.F.R.§ 575.104, tires is appropriate.

- **Foreign Warranty Information.** Warranty coverage outside the United States varies from country to country based on the culture of the country, customer expectations in the marketplace, and business considerations. Warranty coverage for one tire may be vastly different in the United States versus warranty coverage for the identical tire in Europe. In many foreign countries, the consumer-oriented marketplace that is typical of the United States does not exist, and it is rare for tires to be warranted at all. In addition, foreign countries frequently have vastly different road conditions from those in the United States, where our roads, as a whole, are comparatively well-constructed and maintained. As such, foreign warranty information is not comparable to U.S. warranty information. In addition, obtaining and formatting foreign warranty information to be consistent with a U.S. reporting format would be quite burdensome, because foreign data may not be readily available or maintained in such a way as to be capable of integration with U.S. data. Reporting foreign warranty data would provide little, if any, value to NHTSA, while imposing a significant and undue burden on tire manufacturers. Therefore, RMA proposes that the early warning reporting system for tires include only U.S. warranty adjustment data.

There should be no concern that, by excluding foreign warranty data, NHTSA would be missing out on important information. Aside from the questionable value of foreign warranty

data, NHTSA currently has access to all foreign "safety recall or other safety campaign" information involving tires identical or substantially similar to those sold in the United States under the reporting requirements already in place under Section 3(a) of the TREAD Act. This information – which must be reported within 5 working days – would encompass the vast majority of useful information on foreign tires. In addition, information regarding injuries and fatalities and lawsuits for substantially similar products supplied in foreign markets will be provided to NHTSA under other elements of RMA's proposal. Requiring the reporting of warranty information on foreign tires would provide no additional benefit.

RMA believes that the four categories of information described on page 3 above will provide NHTSA exactly what it needs to implement an effective and efficient early warning reporting system for tires. RMA's proposed system also has the advantage of providing the Agency with information in a standardized format that can be easily adapted to NHTSA's data storage and processing systems. The system contemplates providing NHTSA with the most relevant, readily analyzed data specifically designed for the early warning reporting system for tires mandated by the TREAD Act.

B. WHO SHOULD REPORT INFORMATION REGARDING TIRES

The goal of an early warning reporting system must be to provide NHTSA with safety-related data on tires in use in the United States. In the ANPRM, NHTSA suggests that all "manufacturers" of tires, as that term is defined under the National Traffic and Motor Vehicle Safety Act of 1966, should be subject to the new reporting requirements. This statute defines a motor vehicle equipment manufacturer as a person who (A) manufactures or assembles motor vehicle equipment; or (B) imports motor vehicle equipment for resale. *See* 49 U.S.C. § 30166(m). Thus, any entity that produces tires in the United States or imports tires into the United States is a "tire manufacturer."

Because importers are "manufacturers" covered by the TREAD Act, RMA supports NHTSA's view that importers of tires should be subject to the same early warning reporting requirements as domestic tire manufacturers. While not necessarily affiliated with an actual tire manufacturer, tire importers may offer their own warranty programs. Including importers would thus ensure that the early warning reporting system covers the vast majority of tires available for purchase and use by U.S. consumers.

U.S. consumers also purchase tires through large chain stores, such as Sears, Wal-Mart, and other large retailers/distributors under private label brands. As NHTSA recognizes, tire brand owners are also considered "manufacturers" under 49 U.S.C. § 30102 (b)(1)(E). These brand owners have the same defect and noncompliance reporting requirements as tire

manufacturers under 49 C.F.R. § 573.3(d). However, the warranty programs and tire inspection systems of the brand owners often differ from those of tire manufacturers. The business relationships between brand owners and tire manufacturers may not include the sharing of warranty data or the responsibility of reporting such data to NHTSA.

As the ANPRM makes clear, NHTSA's primary concern is to obtain relevant early warning data in an accurate and timely fashion. RMA believes that the private label brand owners should be subject to the same reporting requirements as those imposed on traditional tire manufacturers. With the onset of the early warning reporting system, the relationship between the tire manufacturers and the brand name owners may need to change. NHTSA should, however, allow the tire manufacturer and the private label brand owners to decide who should report the necessary early warning information to best address issues of duplication and technical analysis.

C. OTHER INFORMATION

The ANPRM posits requiring manufacturers to routinely report several other categories of information, including internal investigations, design changes and "field reports." NHTSA should not require the reporting of this information as part of an early warning reporting system because it could be misleading, the data may be duplicative or unrelated to issues of safety, and such reporting would not provide any more relevant information than RMA's proposed early warning reporting system would provide. In any event, should NHTSA consider such information necessary in a particular situation, NHTSA already has the authority to request or subpoena such information.

Internal Investigations. RMA objects to any regulatory requirement that tire manufacturers automatically notify NHTSA when they have begun an internal investigation. Internal investigations are initiated for a number of reasons, many of which have nothing to do with tire safety. Congress clearly did not intend manufacturers to report internal investigations related to improving product performance, nor would such data be useful in identifying safety-related issues. Internal investigation information would frequently be redundant to the extent the investigation was based on data reportable to NHTSA under RMA's proposed early warning reporting system.

The inherent nature of internal investigations is another factor weighing against their use in an early warning reporting system. Investigations are a continuous process rather than a single data point. Information is continuously being fed into this process, which may change the conclusions or direction of an investigation at any time. Because of this characteristic of

ongoing investigations, any conclusions or inferences that may be drawn from an ongoing investigation will necessarily be unreliable.

Finally, there is no standard definition of an "internal investigation." The term is understood differently by each manufacturer according to its own internal methods of doing business. Consequently, this information would not be reportable in any sort of standardized format that would readily lend itself to an industry-wide early warning reporting system.

Field Reports. The term "field report" is not well defined across the tire industry, and can include reports made by untrained individuals, such as sales personnel and dealers, concerning the perceived performance of a tire in the marketplace. These reports are used to different degrees and for different reasons by each manufacturer, but, in general, they relate more to the manufacturer's marketing and consumer satisfaction programs (as possible indicators of consumer perceptions about different brands) and are not considered reliable indicators of tire performance. In addition, such reports often include information that would be captured in the manufacturer's quarterly warranty data report under RMA's proposed early warning reporting system. Thus, requiring the reporting of field reports would be redundant and would not provide NHTSA with any more relevant data than RMA's proposed early warning reporting system would provide.

Design Changes. An early warning reporting system should not require tire manufacturers to report design changes made to their products. Tires continuously undergo design and manufacturing process changes in order to respond to the demands for improved customer satisfaction in a highly competitive marketplace. Indeed, design changes are made for many reasons, including improvements made to the tire's comfort and handling, the supply of raw materials needed to manufacture components, and changes made to the manufacturing process. Depending upon how the term "design change" is defined, it could involve tens of thousands of reportable events per year. This voluminous information, unrelated to safety, would tax NHTSA's resources without adding any significant early warning benefit. The industry is also justifiably concerned that any requirement to automatically report design changes to a government agency could have a chilling effect on product improvement. This clearly would not be in the best interest of consumers, the industry, or NHTSA and would run counter to congressional intent to improve safety.

Passwords. Although it is unclear whether NHTSA even intended the password concept to apply to tires and other motor vehicle equipment, RMA notes that its proposed early warning reporting system for tires would render a password-sharing system unnecessary. The tire manufacturers are willing to bring the data to NHTSA in a user-friendly, reasonably standardized format, rather than forcing NHTSA to dig information out of a myriad of disparate

systems. Password-sharing also presents serious confidentiality issues. Specifically, there would be no way for a manufacturer to determine what information NHTSA has obtained and, therefore, no way for the manufacturer to request confidential treatment of that information under 49 C.F.R. Part 512 and the Freedom of Information Act, 5 U.S.C. § 551. Moreover, password-sharing poses a tremendous threat to computer security and provides an additional backdoor for hackers to invade security systems. Because RMA's proposed early warning reporting system would provide the same tire data that NHTSA would obtain under a password-sharing program, any perceived benefit of such a program would be far outweighed by the industry's legitimate confidentiality and security concerns.

III. HOW NHTSA SHOULD USE THE DATA

The TREAD Act expressly requires NHTSA to specify in the final early warning reporting regulations "(i) how [early warning] information will be reviewed and utilized to assist in the identification of defects related to motor vehicle safety; [and] (ii) the systems and processes [that NHTSA] will employ or establish to review and utilize such information." While the ANPRM notes that these provisions of the statute "relate to internal NHTSA matters," 66 *Fed. Reg.* at 6543, RMA believes that the manner in which the Agency reviews and utilizes early warning data is critical to the success or failure of the early warning reporting system mandated by the TREAD Act. In this regard, RMA urges NHTSA to keep in mind that the purpose of the early warning reporting system is to provide the Agency with information that may or may not suggest that a particular product or condition presents a defect.[7] NHTSA should ensure that it educates all potential users of the system, as well as the public, that the existence of the reporting system does not indicate or conclude anything about the safety of tires in general or of any particular tire.

RMA addresses below several other issues relating to NHTSA's utilization and review of early warning data relating to tires.

Data Submitted By Non-Tire Manufacturers. RMA does not object to the reporting of early warning data by entities other than tire manufacturers. We understand, in fact, that the automobile manufacturers intend to submit tire-related data directly to NHTSA. Other entities, such as retail tire dealers, may do so as well. While NHTSA can certainly "review and utilize" this data, it must realize that the data will not be as complete, accurate, or reliable as data submitted by the tire manufacturers under RMA's proposed early warning reporting system. For this reason, the final regulations should require all non-tire manufacturers that submit tire-related

[7] For example, the fact of a tread separation, standing alone, is not evidence of a defect.

data to NHTSA to simultaneously send a copy of this data directly to the affected tire manufacturer. As discussed above, only trained and experienced tire experts are capable of determining the cause of a tire disablement, and tire manufacturers are uniquely qualified and have the systems in place to make these determinations.

NHTSA also must not combine data submitted by the tire manufacturers with data submitted by non-tire manufacturers. Data submitted by the auto manufacturers, for example, could include much of the same data submitted by tire manufacturers with respect to tires that are manufactured as original equipment for an automobile, which could result in significant duplication and misinterpretations of the data's significance. On the other hand, auto manufacturer data will not be as accurate or as complete as data submitted by tire manufacturers, because it will not include information about after-market replacement tires. Thus, the only data that will provide NHTSA with complete, accurate and reliable information about the largest universe of tires in use by U.S. consumers is the data submitted directly by the tire manufacturers.

Disclosure. Congress was so concerned about protecting the confidentiality of data submitted under an early warning reporting system that it explicitly included a separate provision in the TREAD Act that prohibits the information's disclosure "unless the Secretary determines the disclosure of such information will assist in carrying out [the provisions of the Motor Vehicle Safety Act]." The ANPRM states that this provision "will have almost no impact," 66 *Fed. Reg.* at 6543, and notes that "[h]istorically, requests by the public for information that have [been] submitted to us have been addressed under the Freedom of Information Act (FOIA), 5 U.S.C. § 551." *Id.*

While the TREAD Act gives NHTSA the discretion to disclose early warning data, it qualifies that discretion by requiring disclosure only to the extent it will assist the Agency in fulfilling its statutory mandate to promote motor vehicle safety. RMA, therefore, urges NHTSA not to disclose any business confidential and competitively sensitive information that the tire manufacturers report under the early warning reporting system. In particular, RMA is concerned about the public disclosure of warranty data (including tire production numbers and shipment quantities) for each manufacturer, because the public obviously includes each manufacturer's competitors, and, as explained above, warranties are essentially competitive tools. We note that it has been NHTSA's past practice to treat such information as confidential upon request of the manufacturer, and we urge the Agency to continue that practice with respect to early warning data. Indeed, NHTSA itself recognizes that, "[t]he TREAD Act does not affect the right of a manufacturer to ask for a determination that information it may report to NHTSA is confidential." 66 *Fed. Reg.* at 6544.

In addition, we urge NHTSA to continue its practice of requiring a FOIA request for information submitted to the Agency and not to simply post early warning data on its website or otherwise make this information available to the public prematurely. Upon receipt of a FOIA request, NHTSA should give notice to the affected tire manufacturers and allow them to comment before NHTSA makes a final determination concerning disclosure of the requested information. This approach, we believe, strikes the appropriate balance between Congress's concern about protecting early warning data from disclosure and NHTSA's ability to fulfill its statutory mission.

Information in the Possession of the Manufacturer. The TREAD Act expressly provides that NHTSA's early warning reporting regulations "may not require a manufacturer of . . . motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer." The ANPRM suggests the term "possession" should mean "not only information in the actual possession of a manufacturer, but also constructive possession and ultimate control of information, such as information in foreign countries, or information possessed by outside counsel or consultants." 66 *Fed. Reg.* at 6543. RMA strongly disagrees with NHTSA's suggested definition of this critical term.

Neither the TREAD Act nor its legislative history provides any basis for NHTSA to expand the statutory term "possession" to include "constructive possession." *See* H.R. Rep. 106-954, 106th Cong., 2d Sess., pp. 3, 14, 22 (no suggestion that "possession" includes "constructive"). Indeed, we believe Congress included a separate provision in the statute to make clear its intent to limit the amount of information that must be reported to NHTSA under an early warning reporting system. NHTSA's suggested interpretation would effectively write this provision out of the statute. Moreover, such an expansion of the term "possession" to include "constructive possession" could expand a manufacturer's liability under the criminal provisions of the TREAD Act well beyond what Congress intended. Thus, the final regulations adopted in this proceeding should specify that the term "possession" means "actual possession" by the entities subject to early warning reporting requirements.

On a related issue, the ANPRM suggests that manufacturers are required to do more than just provide raw information. NHTSA states that it interprets the TREAD Act to require "a manufacturer to process, organize and to some degree analyze the raw data." 66 *Fed. Reg.* at 6542. This conclusion follows from an unwarranted focus on a definition of the word "derive" that is inconsistent with the context of the language. The statute, Section 30166 (m)(3) states that the information reportable to NHTSA is "information which is received by the manufacturer derived from foreign and domestic sources." The ANPRM concludes that the mere use of the word "derived," which can be defined as "infer or deduce," authorizes NHTSA to require manufacturers to analyze data. Other definitions of "derive" – including "to obtain from a

specific source" or "to take or receive especially from a specific source" (Webster's New Collegiate Dictionary) – are better suited to the situation addressed: manufacturers receiving information from foreign or domestic sources. There is no indication that Congress intended to require manufacturers to routinely provide analysis of the data reported under an early warning system.

IV. CONCLUSION – REQUEST FOR PUBLIC MEETING

For all of the reasons set forth herein, NHTSA should adopt the early warning reporting system for tire manufacturers that RMA has proposed in these comments. That reporting system clearly fulfills the letter and spirit of the TREAD Act and will provide NHTSA with relevant, reliable data in a standardized format that can be effectively used and processed by the Agency.

Because this rulemaking presents many issues of first impression for the Agency, industry, and consumers, RMA urges NHTSA to schedule at least one public meeting on the subject of early warning reporting before it issues the notice of proposed rulemaking on this issue. A public meeting will allow all interested parties to express their views and respond directly to the views expressed by others. In addition, RMA would welcome an opportunity to meet directly with NHTSA staff to explain more fully our proposed early warning reporting system and any other issues addressed in these comments.

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Questions concerning these comments should be directed to Ann Wilson, RMA Vice President for Government Affairs at (202) 682-4837.

Sample Form For Reporting:

Claims For Fatalities And Serious Personal Injury & Lawsuits

(Tire Company X Confidential Information - FOIA Exempt)

Group: **Company X** **April - 2001**

Incident Date	U.S. State or Foreign Country of Incident	Damage Claimed	Vehicle Manufacturer	Vehicle Yr and Model	Tire Size	Tire Line	Tire DOT Code
March 12, 2001	IN	Personal Injury Claim	Y Company	1999 A Type Vehicle	P245/75R15	X Tire Line	XX XXXXXX 2000
March 30, 2001	MA	Lawsuit - Property Damage	Z Company	1999 B Type Vehicle	P175/65R14	Y Tire Line	XX XXXXXX 0100

Sample Form For Reporting:

Warranty Returns & Property Damage Claims

(Tire Company X Confidential Information - FOIA Exempt)

Group: Company X

2005 First Quarter

Tire Size	Tire Line	SKU	Serial Code	Mfg. Plant	OE / Repl.	OE Vehicle & Year	Condition	Tire Production Year	Warranty Production	Number Adjusted	Adj. Rate	Total Production	Number Damage Claims	Property Damage Rate
P245/75R16 XL	Z Tire Line	123-456-789	01XYZ	Pittsburg	OE	X Make, Y Model 2001-2003	Crown	2001	12,345	12	0.00097	14,814	0	0.00000
								2002	67,890	56	0.00082	81,468	2	0.00002
								2003	87,654	43	0.00049	105,185	1	0.00001
								2004	77,777	22	0.00028	93,332	0	0.00000
								2005 1Q	12,321	0	0.00000	14,785	0	0.00000
								Total	257,987	133	0.00052	309,584	3	0.00001
							Sidewall	2001	12,345	9	0.00073	14,814	0	0.00000
								2002	67,890	8	0.00012	81,468	0	0.00000
								2003	87,654	7	0.00008	105,185	0	0.00000
								2004	77,777	3	0.00004	93,332	0	0.00000
								2005 1Q	12,321	0	0.00000	14,785	0	0.00000
								Total	257,987	27	0.00010	309,584	0	0.00000
							Bead	2001	12,345	4	0.00032	14,814	0	0.00000
								2002	67,890	2	0.00003	81,468	0	0.00000
								2003	87,654	3	0.00003	105,185	0	0.00000
								2004	77,777	2	0.00003	93,332	0	0.00000
								2005 1Q	12,321	1	0.00008	14,785	0	0.00000
								Total	257,987	12	0.00005	309,584	0	0.00000
							Other	2001	12,345	20	0.00162	14,814	0	0.00000
								2002	67,890	22	0.00032	81,468	0	0.00000
								2003	87,654	8	0.00009	105,185	0	0.00000
								2004	77,777	1	0.00001	93,332	0	0.00000
								2005 1Q	12,321	0	0.00000	14,785	0	0.00000
								Total	257,987	51	0.00020	309,584	0	0.00000
							Customer Satisfaction	2001	12,345	54	0.00437	14,814	0	0.00000
								2002	67,890	43	0.00063	81,468	0	0.00000
								2003	87,654	32	0.00037	105,185	1	0.00001
								2004	77,777	21	0.00027	93,332	0	0.00000
								2005 1Q	12,321	10	0.00081	14,785	0	0.00000
								Total	257,987	160	0.00062	309,584	1	0.00000

TIRE WARRANTY CONDITIONS

CROWN CONDITIONS

The crown is made up of all materials in the tread area of the tire, including:

1. the rubber that makes up the tread;
2. subbase rubber, when present, between the tread base and the top of the belts;
3. the belt material, either steel and/or fabric, and the rubber coating of the same, including any rubber inserts;
4. the body ply and its coating rubber under the tread area of the tire; and
5. the inner-liner rubber under the tread.

Conditions reported in this category include any separation of any one component from another or a separation within a component.

SIDEWALL CONDITIONS

The sidewalls are made up of all materials in the side areas of the tire between the crown and the beads, including:

1. the sidewall rubber components;
2. the body ply and its coating rubber under the side area; and
3. the inner-liner rubber under the body ply in the side areas.

Conditions reported in this category include any separation of any one component from another or a separation within a component, and any breaks or tears of any component.

BEAD CONDITIONS

The beads are made up of all materials below the sidewalls in the rim contact area, including:

1. bead rubber components;
2. bead bundle and rubber coating if present;
3. the body ply and its turn-up including the rubber coating;
4. rubber, fabric, or metallic bead reinforcing materials; and

5. the inner-liner rubber under the bead area.

Conditions reported in this category include any separation of any one component from another or a separation within a component, and any break or tear of these components.

OTHER CONDITIONS

This category reports warrantable conditions, not included above, in any area of the tire, such as joints, splices, folds, spacing, foreign materials, cure related, and re-work.

CUSTOMER SATISFACTION CONDITIONS

Conditions reported in this category include any tire not meeting customer expectations due to adverse operating conditions, cosmetic conditions, ride conditions, wear conditions, customer abuse, conditions not directly related to the tire (e.g., valve leak, bent rim), and the like.

GENERAL INFORMATION ABOUT TIRE COMPONENTS AND TIRE MANUFACTURING

Tires manufactured today are complex and sophisticated items of motor vehicle equipment requiring an understanding of polymer chemistry, mechanical engineering, metallurgy, and other disciplines. A modern steel belted radial passenger car or light truck tire, for example, is a carefully designed and engineered combination of more than 200 raw materials, including natural and synthetic rubbers, fabrics, steel, oils, pigments, chemicals, and other materials that must meet complex demands. The resulting tire is a highly engineered structure consisting of six major components.

1. The inner liner is a unique rubber compound that acts as the tire's inner tube and retains the air in the tire.

2. The beads of the tire are a composite of unique rubber compounds and steel wires that serve as the tire's foundation and secure the tire to the rim once the tire has been inflated.

3. The body plies are a composite of fabric or steel cord and unique rubber compounds that enable the tire to contain the inflation pressure necessary to carry the specified loads. These body plies must be strong enough to contain the air pressure, yet flexible enough to absorb shocks.

4. The reinforcing belts are a composite usually of steel or fabric cord and unique rubber compounds that provide additional strength and stability in the tread area. The reinforcing belts must be flexible, but still must help maintain optimum structural stiffness.

5. The tread consists of unique rubber compounds and specially designed tread elements that provide wet and dry traction capabilities and handling characteristics, while providing appropriate treadwear and rolling resistance properties. The tread must be durable, but not too hard and brittle, and must not create too much noise and vibration.

6. The tire sidewalls, consisting of unique rubber compounds, protect the tire's internal structure against cuts, abrasions, other external damage, and provide aesthetic appearance to the tire. The sidewall also has special fatigue-resistant

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properties to withstand millions of flex cycles as the tire rotates on the highway. It must also resist the environmental effects that can contribute to degradation, *i.e.*, ozone cracking, etc.

One reason tires are so complex is that they are required to perform many, often conflicting, functions. Tires are expected to carry heavy loads, to minimize rolling resistance, to provide the traction that translates the engine's power into motion, and to last for many thousands of miles in service. Tire design must also take into account the effects and demands of steering, accelerating, braking, cornering, shock cushioning and handling. Moreover, unlike other vehicle components, tires must perform these functions totally unprotected and under demanding conditions at the extremes of heat and cold, on roads that are sometimes dry, sometimes wet, and sometimes covered with snow or ice, and in the face of numerous road surface conditions, potential road hazards, and assorted debris in the road.

Despite the complexity of tires and the adverse conditions under which they must operate, tires are exceptionally safe products, provided they are properly used and maintained.[1] RMA estimates that in 1999 there were more than 822 million tires on non-commercial vehicles (including passenger cars, light trucks and sport utility vehicles) in use on our nation's highways. RMA also estimates that, for 1998, non-commercial vehicles were driven a total of more than 2.4 trillion miles. The fact is that tire failures in service are rare, and failures due to defects in tire design or manufacture are rarer still.

In designing, developing and manufacturing tires, the tire manufacturers must take into account all of the conditions outlined above and the demands placed on tires on a daily basis over thousands of miles of use. Because of the number of disparate factors that can come into play in determining why a particular tire came out of service, tire manufacturers are uniquely qualified to provide meaningful data concerning the performance of tires in the field – the precise type of data that is most relevant to an early warning reporting system. Moreover, tire manufacturers constantly review data, conduct analyses on tires and perform ongoing research and development activities to improve the quality, performance, and service longevity of tires. This data includes detailed tire performance characteristics, it is based on analysis by skilled tire technicians, it includes information on tires that are used as both original equipment and replacements, and it includes the production history to provide a basis for accurate performance rates. Because of this experience and knowledge, data from tire manufacturers regarding their products is the most comprehensive and reliable information available.

[1] Last fall, RMA expanded its long-standing public information and educational activities with its "Be Tire Smart – Play Your Part" campaign, to emphasize to consumers the importance of their role in checking tire Pressure, Alignment, Rotation, and Tread ("PART"). Copies of RMA's educational brochure, in English and Spanish, are attached.

YOUR TIRE MAINTENANCE CHECKLIST

PRESSURE

Underinflation is the leading cause of tire failure. It results in unnecessary tire stress, irregular wear, loss of control and accidents. A tire can lose up to half of its air pressure and not appear to be flat!

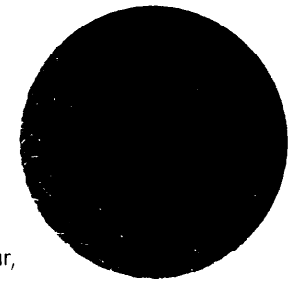
ALIGNMENT

A bad jolt from hitting a curb or pothole can throw your front end out of alignment and damage your tires. Have a tire dealer check the alignment periodically to ensure that your car is properly aligned.

ROTATION

Regularly rotating your vehicle's tires will help you achieve more uniform wear. Unless your vehicle's owners manual has a specific recommendation, the guideline for tire rotation is approximately every 6,000 miles.

TREAD



Advanced and unusual wear can reduce the ability of tread to grip the road in adverse conditions. Visually check your tires for uneven wear, looking for high and low areas or unusually smooth areas. Also check for signs of damage.

HOW TO TAKE CARE OF YOUR TIRES

Proper tire care and safety is simple and easy. The Rubber Manufacturers Association (RMA) recommends getting in the habit of taking five minutes every month to check your tires, including the spare.

If you think you may have a tire problem or are unsure of the condition of your tires, consult a tire dealer as soon as possible.

ABOUT THE RUBBER MANUFACTURERS ASSOCIATION

Headquartered in Washington, D.C., the Rubber Manufacturers Association (RMA) is the primary national trade association for the finished rubber products industry in the United States.

Founded in 1915, RMA represents over 100 member companies and affiliated organizations that manufacture products such as tires, tubes, gaskets, belts, seals and hoses. The Association is comprised of two main divisions — the General Products Group and the Tire Group.

RMA is a major force in shaping legislation and regulations affecting the rubber industry. It is widely recognized as the single most important voice of the industry and the forum through which manufacturers can work together toward common objectives.

RMA operates in service areas of general concern to all members, including economics, education, technical and standards, environment, government relations, natural rubber, occupational safety and health and rubber statistics, public relations, and transportation.

To learn more about RMA, visit our Web site at www.rma.org, or contact us at:

1400 K Street, NW
Washington, DC, 20005
202/682-4800
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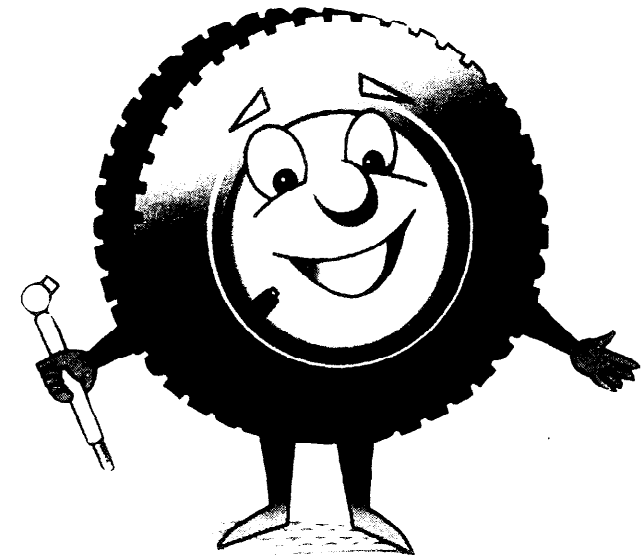
RUBBER manufacturers association

be tire smart

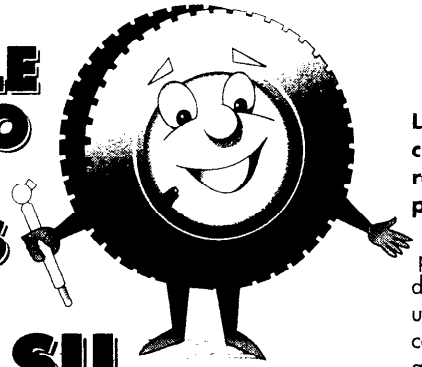


play your PART

PRESSURE • ALIGNMENT • ROTATION • TREAD

A consumer education program of the Rubber Manufacturers Association

PÓNGALE CUIDADO A SUS LLANTAS



HAGA SU PARTE

PRESIÓN • ALINEACIÓN • ROTACIÓN • BANDAS

PRESIÓN

Es importante que sus llantas tengan la adecuada presión de aire, ya que un inflado insuficiente es la causa principal de fallo en la llanta. La "cantidad correcta" de aire para sus llantas es especificada por el fabricante del vehículo y se puede encontrar en los laterales de las puertas delanteras, la guantera o la tapa del tanque de la gasolina. También se indica en el manual del vehículo.

1. Cuando revise la presión de aire, asegúrese de que las llantas estén frías—es decir, que no estén calientes ni siquiera después de haber manejado una milla—. (NOTA: Si tiene que conducir una distancia considerable para conseguir aire, revise y registre la presión de aire primero y luego añadala cantidad apropiada de aire cuando llegue al lugar donde está la bomba de aire. Es normal que las llantas se calienten y que la presión de aire aumente a medida que conduce. Nunca desinfle o reduzca la presión de aire cuando las llantas están calientes).

2. Destape la válvula de una de las llantas.

3. Apriete el manómetro de presión sobre la válvula con firmeza.

4. Añada aire hasta conseguir la presión de aire recomendada.

5. Si infla la llanta en exceso, deje escapar aire apretando la clavija de metal en el centro de la válvula con una uña o con la punta de una pluma. Luego vuelva a chequear la presión con su manómetro.

6. Tape la válvula.

7. Repita el proceso con cada llanta, incluyendo la de repuesto. (NOTA: Algunas llantas de repuesto requieren una mayor presión de inflado).

8. Examine sus llantas para asegurarse de que no tengan clavos u otros objetos incrustados que podrían abrir un agujero en la goma y causar un escape de aire.

9. Revise los lados de las llantas para comprobar que no haya cortes, grietas, abultamientos u otras irregularidades.

NOTA: La presión de una llanta aumenta (si hace calor) o disminuye (si hace frío) de 1 a 2 libras por cada 10 grados de diferencia en la temperatura.

ALINEACIÓN

La alineación incorrecta de las ruedas delanteras o traseras puede causar un desgaste desigual y rápido de las bandas de rodamiento y debería ser corregida por un especialista. Los vehículos de tracción delantera, y aquellos con suspensión trasera independiente, requieren la alineación de las cuatro ruedas. Haga revisar su alineación periódicamente tal y como lo especifica el manual de su vehículo o siempre que haya alguna indicación de problemas tales como el "volante duro" (tirones laterales) o vibraciones.

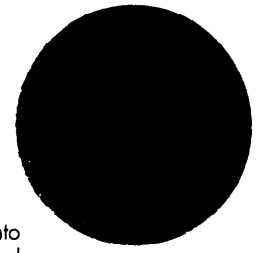
También haga revisar periodicamente el equilibrado de sus llantas. Un montaje de llantas y ruedas que está mal equilibrado puede causar un desgaste irregular.

ROTACIÓN

A veces el desgaste irregular de la goma se puede arreglar al rotar las llantas. Consulte el manual del vehículo, o acuda al fabricante de las llantas o a un taller para averiguar el patrón adecuado de rotación de su vehículo. NOTA: Si sus llantas muestran un desgaste desigual, pídale a su taller que revise y arregle la alineación y el equilibrado o cualquier otro problema mecánico de este tipo antes de hacer la rotación.

Siempre consulte las recomendaciones del manual de su vehiculo con respecto a la rotación de las llantas antes de rotarlas. Si no hay un periodo de rotación especificado, debe rotar las llantas cada 6.000 millas aproximadamente.

BANDAS



Las llantas se deben cambiar cuando las bandas de rodamiento presentan una profundidad de 1/16 de pulgada o menos con el objeto de prevenir el patinaje y el deslizamiento del automóvil. Una prueba fácil: Introduzca un centavo en una de las ranuras de la banda. Si parte de la cabeza de Lincoln queda cubierta por la banda, quiere decir que usted está manejando con una banda lo suficientemente profunda. Si puede ver la cabeza entera, necesita comprar una llanta nueva.

Indicadores de desgaste incorporados, o "barras de desgaste" que consisten en tiras delgadas de caucho liso sobre la banda, se harán visibles cuando la banda alcance la profundidad mínima de 1/16 de pulgada. Cuando vea estas "barras de desgaste", la goma está gastada y debe ser cambiada.

Examine sus llantas para detectar posibles señales de desgaste en banda. Puede haber desgaste desigual si la banda presenta zonas altas y bajas o zonas demasiado lisas. Consulte con un taller de llantas lo antes posible.

MÁS INFORMACIÓN IMPORTANTE...

Practique buenos hábitos de manejo, ya que le ayudarán a mantener sus llantas en buen estado.

- Respete los límites de velocidad indicados.
- Evite fuertes aceleraciones, frenazos o giros rápidos.
- Esquive baches y objetos en la calle.
- No se suba sobre la acera o dé contra el borde al estacionar.
- No sobrecargue su vehículo. Respete la carga máxima recomendada por el fabricante o el manual de su vehículo.

Si cuida sus llantas, éstas pueden durarle mucho tiempo—normalmente entre 40.000 y 80.000 millas, dependiendo de su uso o modo de empleo—.

Visite la página **www.rma.org/tiresafety** para mayor información sobre la seguridad en llantas.